



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,173	03/06/2002	Michael K. Gunaratnam	JPD-4398-211	7110
23117 7590 02/11/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
DIXON, ANNETTE FREDRICKA				
ART UNIT		PAPER NUMBER		
3771				
MAIL DATE		DELIVERY MODE		
02/11/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/090,173

Applicant(s)

GUNARATNAM ET AL.

Examiner

Annette F. Dixon

Art Unit

3771

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-35, 39, 62, 63 and 71-106 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-35, 39, 62, 63 and 71-106 is/are rejected.
- 7) ☒ Claim(s) 71-106 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to the amendment filed on November 20, 2007. Examiner acknowledges claims 33-35, 39, 62, 63, 71-106 are pending in this application, with claims 33 and 39 having been currently amended, claims 1-32, 36-38, 40-61, and 64-70 having been cancelled, and claims 71-106 having been newly added.

Drawings

2. The amendment to add inadvertently omitted material pursuant to 37 CFR 1.57(a) filed November 20, 2007 is not in compliance with 37 CFR 1.57(a) because the inadvertently omitted portion is not completely contained in the prior-filed application and applicant did not identify where the inadvertently omitted portion of the specification or drawings can be found in the prior-filed application.

3. The drawings are objected to because Applicant has incorporated new matter into the drawings. No amendment may introduce new matter into the disclosure of an application after its filing date. MPEP §608.04. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the

several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The amendment to add inadvertently omitted material pursuant to 37 CFR 1.57(a) filed November 20, 2007 is not in compliance with 37 CFR 1.57(a) because the inadvertently omitted portion is not completely contained in the prior-filed application and applicant did not identify where the inadvertently omitted portion of the specification or drawings can be found in the prior-filed application.
5. The amendment filed November 20, 2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the newly recited features of the cantilever and the male and female connectors including but not limited to the ridge and arcuate projection. Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 71-106 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No amendment may introduce new matter into the disclosure of an application after its filing date. MPEP §608.04.

Specifically, Claims 71-106 now recite claimed features of the cantilever and the connectors; however, the originally filed disclosure does not provide evidence that Applicant possessed the newly claimed invention at the time the invention was filed. In fact, Applicant's amendments to the specification and the drawings disclose additional elements that do not reasonably convey to one of ordinary skill in the art knowledge of how to make and use the claimed invention based upon the original disclosure as filed. Thusly, there is no support for the newly claimed features within the original disclosure as filed; therefore, the subject matter added to claims 71-106 is considered new matter and must be cancelled from the claims. Accordingly, claims 71-106 have not been further treated on the merits.

Claim Rejections - 35 USC § 103

Art Unit: 3771

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 39, 62 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rudolph (6,192, 886).

As to Claims 39, 62 and 63, Rudolph discloses a respiratory mask (5) and headgear (the combination of elements 8 and 9) comprising: a respiratory mask (5) having a rigid mask frame (13), adjustable headgear (the combination of elements 8 and 9) for securing said mask on a patient, said headgear (the combination of elements 8 and 9) including at least one attachment strap (9), said mask frame (13) having rigidly secured thereto a rigid first connector portion (90), and a second connector portion (10) adapted for releasable mating with said first connector portion, wherein said first and second connector portions (the combination of elements 90 and 10, respectively) form a press-release between said mask frame and said strap. (Column 6, Lines 28-43). Further, Rudolph discloses a plurality of connectors as seen in Figures 1-3). Yet Rudolph does not expressly disclose the first connector portion to be a female connector and the second connector portion to be a male connector. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first connector to be female and attached to the mask and the second connector to be male and attached to the strap, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Further, one of ordinary skill in the art would not expect the rearrangement of parts to adversely affect the effectiveness of the mask to be secured to the patient for operation.

10. Claims 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rudolph (6,192, 886) in view of Ferrero et al. (5,657,493).

As to Claim 33, Rudolph discloses all the recited elements, yet does not expressly disclose the use of a cantilever member with the connector elements. However, at the time the invention was made the use of cantilever members in mask connectors was well known. Specifically, Ferrero teaches the cantilever member (the combination of elements 30 and 36) has a leading end (the portion containing element 44), a trailing end (the portion containing element 56) and a release portion (56), and a locking portion (58). (Figures 5-8). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the cantilever member in combination with the male connector on the strap, as taught by Ferrero, for the purpose of retaining the strap and mask on the user.

As to Claim 34, Rudolph discloses a gas delivery conduit (78) attached to the front wall portion of the mask frame. (Figures 1 and 2).

As to Claim 35, Rudolph discloses a mask frame (13) has a rim (17) for enabling a cushion (33) to be applied. (Figures 1 and 2).

Response to Arguments

11. Applicant's arguments filed November 20, 2007 have been fully considered but they are not persuasive. Applicant asserts the prior art made of record does not teach or fairly suggest the recited orientation of the male and female connectors on the respiratory mask. However, Examiner respectfully disagrees with Applicant's assertion. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Further, Applicant has not provided the Examiner with any proof or reasoning as to how or why the arrangement of the male and female connectors from the mask region to the strap region would inhibit the operation and ability of the airflow mask to properly function. Finally, Examiner presents prior art Lane (5,555,569) as extrinsic evidence of the teaching of a male connector (120) positioned on the strapping region and a female connector (106) positioned on the mask region for the purpose of retaining the mask region to the strap region. (Figure 7, Column 4). Thus, in light of the aforementioned reasoning the rejection of the claims has been maintained.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lane (5,555,569).

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Annette F Dixon
Examiner
Art Unit 3771

/Annette F Dixon/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771
1/31/08